

OVDI- 2nd Amnesty

On February 8, 2011, the IRS announced the 2011 Offshore Voluntary Disclosure Initiative (OVDI), designed to bring offshore money back into the U.S. tax system and help people with undisclosed income from hidden offshore accounts get current with their taxes. The OVDI covers calendar years 2003 to 2010, and is available through August 31, 2011 for individuals as well as entities such as corporations, trusts and partnerships.

As with other programs in the past, the OVDI eliminates the risk of criminal prosecution for taxpayers that are accepted into the program, and provides for reduced civil penalties than would apply if the IRS were to discover the taxpayer's noncompliance in this area. The terms of the 2011 OVDI differ from the terms of the 2009 Offshore Voluntary Disclosure Program (OVDP). In general, taxpayers will pay taxes for eight years and will pay an offshore penalty of 25% of the highest aggregate account balance in the taxpayer's foreign bank accounts during the years 2003 through 2010. This offshore penalty is in lieu of all other penalties that might apply, except for the failure to file, failure to pay, and accuracy-related penalties. Taxpayers with offshore accounts of less than \$75,000 in each calendar year covered by the OVDI will qualify for a 12.5% penalty rate. In very limited circumstances will taxpayers qualify for a 5% rate, including the case of a foreign resident who was unaware they were considered U.S. citizens.

Is Voluntary Disclosure Right for You?

The factors that go into determining whether a taxpayer should make a voluntary disclosure are numerous and complex. A taxpayer considering making a voluntary

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disclosure may want to discuss the matter with an experienced attorney. That discussion would be protected from disclosure by attorney-client privilege, which is vital particularly in instances where the taxpayer ultimately decides not to make the disclosure. However, a consultation regarding the voluntary disclosure program with a taxpayer's accountant is not a privileged communication. If the decision were made not to enter the OVDI, and the IRS discovers the foreign financial account, the taxpayer's accountant could become a witness for the IRS against the taxpayer. This would not be the case if an attorney, rather than an accountant, had been consulted.

IRS Commissioner Shulman stated:

"As I've said all along, the goal is to get people back into the U.S. tax system. Combating international tax evasion is a top priority for the IRS. We have additional cases and banks under review. The situation will just get worse in the months ahead for those hiding assets and income offshore. This new disclosure initiative is the last, best chance for people to get back into the system.",

"As we continue to amass more information and pursue more people internationally, the risk to individuals hiding assets offshore is increasing...This new effort gives those hiding money in foreign accounts a tough, fair way to resolve their tax problems once and for all. And it gives people a chance to come in before we find them."

The voluntary amnesty program will be termed the "2011 Offshore Voluntary Disclosure Initiative" (OVDI) and, from what I have seen to date, will incorporate many of the items of the 2009 amnesty, both good and bad. OVDI has increased the penalty to 25% of the amount in the foreign bank accounts in the year with the highest aggregate account balance while looking at a 7-year period, from 2003 through 2010. This 25% penalty will apply to most filers of the OVDI amnesty. In addition, amnesty filers will be required to accept and pay back any and all taxes, interest and accuracy related penalties with a total payoff of these taxes, and interest and penalties on or before the August 31, 2011 deadline. Taxpayers participating in the new initiative must also file all original and amended tax returns and include payment for taxes, interest and accuracy-related penalties by the Aug. 31 deadline.

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Now, when I was in law school, our tax professor would always make reference to a particular tax rule and continue to state that the rule had so many exceptions that it was like "the tail wagging the dog."

1. The above 25% penalty may be reduced to 5% in very special situations;
2. If your offshore accounts (and assets!) are less than \$75,000 in any tax year from 2003 through 2010, then that year will face a reduced penalty from 25% to 12.5%. However, the tax, interest and accuracy related penalties will still apply in full, please see immediately below on the interest and accuracy related penalty.
3. As mentioned in the 2009 amnesty, the IRS continues to solicit compliance with the threat of "possible" criminal prosecution for taxpayers who do not come forward in the 2011 amnesty offering.
4. The 2011 initiative offers clear benefits to encourage taxpayers to come in now rather than risk IRS detection. Taxpayers hiding assets offshore who do not come forward will face far higher penalty scenarios as well as the possibility of criminal prosecution.